

REMARKS/ARGUMENTS

In the specification, an amendment directing entry of the substitute sequence listing filed on January 23, 2004 has been made to perfect sequence compliance. Also in the specification, the first paragraph has been amended to reflect the updated status of non-provisional application 09/573,684.

Claims 1-21 are pending. In the Office Action dated February 17, 2006, the Examiner identified the following seven sets of claims and required, under 35 U.S.C. § 121, that the application be restricted to only one of the sets of claims:

- I. Claims 1-7, 16, 18 and 20-21, drawn to a method for alleviating or preventing the accumulation of ammonia in a medium by providing a bacterial strain comprising SEQ ID NO:1 or variants thereof, classified in class 435, subclass 168.
- II. Claims 1-7, 16, 18 and 20-21, drawn to a method for alleviating or preventing the accumulation of ammonia in a medium by providing a bacterial strain comprising SEQ ID NO:2 or variants thereof, classified in class 435, subclass 168.
- III. Claims 1-7, 16, 18 and 20-21, drawn to a method for alleviating or preventing the accumulation of ammonia in a medium by providing a bacterial strain comprising SEQ ID NO:3 or variants thereof, classified in class 435, subclass 168.
- IV. Claims 1-7, 16, 18 and 20-21, drawn to a method for alleviating or preventing the accumulation of ammonia in a medium by providing a bacterial strain comprising SEQ ID NO:4 or variants thereof, classified in class 435, subclass 168.
- V. Claims 8-15, 17, and 19-21, drawn to a method for alleviating or preventing the accumulation of ammonia in a medium by providing a bacterial strain comprising SEQ ID NO:18 or variants thereof, classified in class 435, subclass 168.
- VI. Claims 8-15, 17, and 19-21, drawn to a method for alleviating or preventing the accumulation of ammonia in a medium by providing a bacterial strain comprising SEQ ID NO:19 or variants thereof, classified in class 435, subclass 168.
- VII. Claims 8-15, 17, and 19-21, drawn to a method for alleviating or preventing the accumulation of ammonia in a medium by providing a bacterial strain comprising SEQ ID NO:20 or variants

thereof, classified in class 435, subclass 168.

In response to the restriction requirement, Applicant hereby provisionally elects, with traverse, to continue prosecution of the claims identified in Group I. However, Applicant respectfully traverses the restriction requirement and respectfully requests reconsideration and withdrawal of the restriction requirement as set forth below.

Applicant submits that a full and complete examination of the claims identified in Group I will also include examination of the claims identified in the other groups. More specifically, Applicant respectfully submits that the claims of Group I should not be examined separately from the claims of Groups II-VII because the two groups of inventions are directed to similar bacterial strains. Thus, the search and examination of all the claims in an application can be made without serious burden.

Applicant respectfully submits that the subject matter of Groups I-VII are sufficiently related and are all based on nucleotide sequences of bacterial strains which are capable of ammonia oxidation in freshwater and/or saltwater environments. This significantly narrows the area of art in which the Examiner needs to search. Furthermore, the claims of each group center on essentially similar claim elements, the main difference being the particular nucleotide sequence being used. Each nucleotide sequence is claimed as sharing the common utility of oxidizing ammonia to nitrite and each method yields the same result directed to that feature. As such, a thorough search and examination of any one claim set would necessarily encompass the search and examination of the remaining claims. In this regard, it is also respectfully noted that, the claims of Groups I-VII have not acquired a separate status in the art as shown by the fact that the current Office Action indicates that the inventions of each group are "classified in class 435, subclass 168." As such, it is respectfully submitted that Groups I-VII should be searched and examined along together to avoid unnecessary delay and expense to the Applicant and duplicative examination by the Patent Office. Accordingly, Applicant respectfully requests that Groups I-VII be prosecuted together in the same application.

Furthermore, pursuant to decision issued in *Examination of Patent Applications Containing Nucleotide Sequences*, 1192 O.G. 68 (November 19, 1996), the Director has decided *sua sponte* to partially waive the requirements of 37 C.F.R. 1.141 *et seq.* and permit "a reasonable number of such nucleotide sequences to be claimed in a single application." MPEP § 803.04. It has been determined that normally ten sequences constitute a reasonable number for

examination purposes. MPEP § 803.04 states that "up to ten independent and distinct nucleotide sequences will be examined in a single application without restriction."

Accordingly, it is strenuously urged that the Restriction Requirement be withdrawn. Nevertheless, to the extent it is not, Applicant provisionally elects, with traverse, the claims of Group I (claims 1-7, 16, 18 and 20-21), and will make appropriate amendments in the next response to office action. The Applicant also reserves the right to later file one or more divisional applications directed to the subject matter of the non-elected/cancelled claims.

An action on the merits is respectfully requested.

Respectfully submitted,

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